

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 PORTLAND DIVISION

4 UNITED STATES OF AMERICA, )

5 Plaintiff, )

Case No. 3:12-cv-02265-SI

6 v. )

7 CITY OF PORTLAND, )

December 21, 2012

8 Defendant. )

Portland, Oregon

9 \_\_\_\_\_)

10 STATUS CONFERENCE

11 TRANSCRIPT OF PROCEEDINGS

12 BEFORE THE HONORABLE MICHAEL H. SIMON

13 UNITED STATES DISTRICT COURT JUDGE

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APPEARANCES

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1 TRANSCRIPT OF PROCEEDINGS

2 DEPUTY COURTROOM CLERK: Your Honor, this is the time  
3 set for a status conference in civil case 12-2265-SI. United  
4 States of America v. City of Portland. For the record, we have  
5 Amanda Marshall -- for the record, we have Adrian Brown and  
6 Michelle Jones by phone. And counsel in the court, would you  
7 please identify yourself for the record, starting with  
8 plaintiff.

9 MS. MARSHALL: Amanda Marshall for the United States.

10 MR. WILLIAMSON: Good morning, Your Honor.  
11 Bill Williams on behalf of the United States.

12 THE COURT: Good morning.

13 MR. KARIA: Good morning. Anil Karia for Portland  
14 Police Association.

15 THE COURT: Good morning.

16 MS. OSOINACH: Ellen Osoinach on behalf of the City.

17 MR. VAN DYKE: Good morning, Your Honor. Jim  
18 Van Dyke on behalf of the City.

19 THE COURT: Who do we have on the telephone?

20 MS. JONES: Good morning. I'm Michelle Jones. I'm  
21 an attorney with the Department of Justice.

22 MS. BROWN: Good morning, Your Honor and counsel,  
23 this is Adrian Brown with the United States Attorney's Office.

24 MS. COON: Your Honor, this is Laura Coon from the  
25 United States Department of Justice.

1           DEPUTY COURTROOM CLERK: And the spelling of your  
2 last name, please?

3           MS. COON: C-O-O-N.

4           THE COURT: All right. Very good. Good morning. On  
5 December 17th, 2012, just four days ago, the United States,  
6 acting through both the United States Attorney for the District  
7 of Oregon and through the Civil Rights Division of the US  
8 Department of Justice in Washington, D.C., brought a lawsuit  
9 against the City of Portland. The United States makes a single  
10 claim for relief under Title 42, United States Code, Section  
11 14141, against the City of Portland.

12           Section 14141 makes it unlawful for, among other things,  
13 city police departments to engage in a pattern or practice of  
14 conduct that deprives persons of rights, privileges, or  
15 immunities, secured or protected by the Constitution or the  
16 laws of the United States. The statute also provides that the  
17 Attorney General with -- has authority to bring an action for  
18 declaratory and injunctive relief.

19           As explained in paragraph 1 of the plaintiff's complaint,  
20 this action seeks to remedy a pattern or practice of  
21 unconstitutional uses of force by officers of the Portland  
22 Police Bureau to frequently persons who have or are perceived  
23 to have mental illness and are in crisis, are subject to  
24 unnecessary or excessive force by Portland police officers.  
25 The Portland Police Bureau lacks adequate policies to guide

1 officers in these circumstances or training supervision and  
2 accountability measures necessary to ensure that officers  
3 comply with the constitutional rights of people in mental  
4 health crisis, closed quote.

5 That's the allegation in plaintiff's complaint.

6 Now, on the same day that the complaint was filed, the  
7 United States and the City of Portland filed a joint motion to  
8 enter settlement agreement and conditional dismissal of action,  
9 all pursuant to Rule 41(a)(2) of the Federal Rules of Civil  
10 Procedure. And the parties have submitted a detailed  
11 settlement agreement that is 76 pages in length.

12 I understand that the parties's motion requests that the  
13 Court dismiss the case with prejudice, but only after and upon  
14 performance of the settlement agreement.

15 So, as I understand the request, in this posture, the  
16 Court would retain jurisdiction and the case would remain open  
17 but essentially inactive during the time in which the parties  
18 perform the agreed-upon settlement.

19 Now, Section 14141 does not dictate the standards for the  
20 district court's review for a proposed settlement agreement.  
21 Now, plaintiff suggests that the Court evaluate the proposed  
22 settlement agreement under the standards used to evaluate the  
23 proposed consent decree.

24 Now, based upon my analysis thus far, my tentative  
25 assessment is that when presented with a proposed consent

1 decree, the Court's duty is similar to, not exactly identical,  
2 but similar to its duties and responsibilities in approving  
3 settlements of class actions.

4 Under those situations, the requisite court approval is  
5 essentially a ratification of a compromise, but the Court must  
6 ascertain and determine that the settlement agreement and its  
7 settlement terms are fundamentally fair, adequate, and  
8 reasonable. And the Ninth Circuit also directs that that is  
9 the standard to be used on consent decrees.

10 Now, in addition to these factors, the Court must also  
11 take into consideration the congressional purpose behind the  
12 statute Section 14141. And here, if the lawsuit seeks to  
13 enforce the statute, as is the case here, the decree must be  
14 consistent with the public objectives sought to be obtained by  
15 Congress.

16 Now, although the Court must consider these factors, the  
17 Court's inquiry is not unlimited, as I see it. The Court's  
18 intrusion upon what is otherwise a private consensual agreement  
19 negotiated between parties, albeit here public entities, must  
20 be limited to the extent necessary to reach a reasoned judgment  
21 that the agreement is not the product of fraud or overreaching  
22 by or collusion between the negotiating parties and that the  
23 settlement, taken as a whole, is fair, reasonable, and adequate  
24 to all concerned.

25 Now, my analogy to class actions, Rule 23(e)(2) requires

1 that a district court hold what is called a fairness hearing  
2 when the proposed settlement discussions will bind class  
3 members.

4 Now, there's no statutory authority or requirement that I  
5 have found so far that requires the Court to hold a fairness  
6 hearing before entering a consent decree in cases that are not  
7 class actions.

8 Nevertheless, the Court has the discretion to do that.  
9 And in order to ensure that the Court has a sufficient basis on  
10 which to decide whether the proposed settlement is  
11 fundamentally fair, adequate, and reasonable, it seems  
12 advisable, to me at least, the tentative conclusion now to hold  
13 a fairness hearing.

14 Now, although a court may hold a fairness hearing, that  
15 hearing must not be turned into a trial or even a rehearsal for  
16 trial on the merits. The district court should not determine  
17 contested issues of fact that underlie the dispute, but the  
18 Court must have a sufficient factual understanding to determine  
19 whether to approve the settlement agreement.

20 Now, neither the trial nor even the appellate court is to  
21 reach any ultimate conclusions on contested issues of fact that  
22 underlie the merits of the dispute without a trial, because it  
23 is the very uncertainty of outcome in litigation, as well as  
24 the avoidance of wasteful and expense of litigation that often  
25 induce consensual agreements.

1 But, ultimately, the Court's determination must be whether  
2 the settlement or the consent decree is fair, adequate, and  
3 reasonable. And often that is nothing more than an amalgam of  
4 a delicate balancing, series of approximations, and,  
5 essentially, rough justice.

6 Now, in addition to receiving the complaint, the joint  
7 motion to enter the settlement agreement, and all the  
8 supporting materials, the Court has also received a motion to  
9 intervene filed by the Portland Police Association.

10 Now, the United States has requested and I have already  
11 granted the United States's motion for an extension of time to  
12 respond to the motion to intervene filed by the Portland Police  
13 Association. The United States and the City of Portland may  
14 file their response to the pending motion to intervene by  
15 Tuesday, January 22nd, 2013.

16 Let me briefly state that to intervene, as matter of  
17 right, Rule 24(a)(2) of the Federal Rules of Civil Procedure  
18 requires that an applicant must demonstrate that four  
19 requirements have been satisfied. First, that the intervention  
20 application is timely. And I'll talk more about that in a few  
21 minutes. Second, that the applicant has a significant  
22 protectable interest relating to the property or transaction  
23 that is the subject of the action. Third, that the disposition  
24 of the action may, as a practical matter, impair or impede the  
25 applicant's ability to protect its interest. And, four, that



1 existing parties may not adequately represent the applicant's  
2 interest.

3 Now, in evaluating whether Rule 24(a)(2)'s requirements  
4 are met, the Court normally follows practical and equitable  
5 considerations and is directed to construe the rule broadly in  
6 favor of proposed intervenors.

7 In a case that may be similar to this one -- although I  
8 will wait to see the parties's responses to the pending motion  
9 to intervene -- the Ninth Circuit has held that a police union  
10 did have the right to intervene in an action brought by the  
11 United States under 42 United States Code Section 14141 -- the  
12 same statute that is pending here -- in a lawsuit against the  
13 City of Los Angeles. That case is *United States v. Los Angeles*  
14 and the opinion is reported at Volume 288, F3d, 391. That's  
15 Ninth Circuit 2002.

16 But the Ninth Circuit in that case also held that the  
17 district court properly denied motions to intervene as of right  
18 made by community groups representing minorities allegedly  
19 subjected to unconstitutional police conduct.

20 Now, the Ninth Circuit found that the union had a  
21 protectable interest in the action because the complaint,  
22 quote, seeks injunctive relief against its member officers and  
23 raises factual allegations that its member officers committed  
24 unconstitutional acts in the line of duty, closed quote. Thus,  
25 the police union had, quote, a protectable interest in the

1 merits of the litigation, closed quote. And the Ninth Circuit  
2 in that case also found that the police union had a protectable  
3 interest in the remedy phase of the litigation, because the  
4 proposed consent decree could affect -- could affect the police  
5 union's collective bargaining agreement with the City of Los  
6 Angeles.

7 Now, I do not know whether those factors will or will not  
8 apply in this case, but that will be part of the determination  
9 that I will make when I decide on the pending motion to  
10 intervene brought by the Portland Police Bureau.

11 If there's opposition to that motion, I will review the  
12 opposition. In a few moments I'll describe our proposed  
13 schedule. I'll hold a hearing, and I'll make a decision on  
14 those questions.

15 But even though the Ninth Circuit in the *Los Angeles* case  
16 said that community groups did not have, at least under the  
17 facts of that case, a right to intervene, they -- the Ninth  
18 Circuit remanded the case back to the district court to  
19 determine whether or not those community groups could intervene  
20 as a matter of discretion or permissive intervention.

21 In other words, the Court may permit anyone who has a  
22 claim or defense that shares with a main action a common  
23 question of law or fact to be what's called a permissive  
24 intervenor. That's under Federal Rule 24(b)(1)(B). And a  
25 court may grant permissive intervention under that rule where

1 the movant shows independent grounds for jurisdiction. The  
2 motion is timely. As I said, I will discuss timeliness in a  
3 few moments. And where the applicants claim, or defense, as a  
4 main action, have a common question of law or fact in common --  
5 but even if the applicant does satisfy -- does satisfy those  
6 standards, the district court has discretion to deny permissive  
7 intervention.

8 Now, as of today's date, no one has yet applied for  
9 permissive intervention, other than the Portland Police  
10 Bureau's motion for intervention as of right or permissive  
11 intervention, and so I don't know whether any community groups  
12 or individuals will be seeking to apply for permissive  
13 intervention.

14 Let me also state that if we do have a fairness hearing I  
15 will be receiving any objections, support, or other comments to  
16 the proposed settlement even from persons who are not granted  
17 formal party status through intervention. That will happen in  
18 connection with a fairness hearing.

19 So the only real practical effect of not being a party  
20 through intervention is that you will not have the formal right  
21 to raise or present issues or arguments or to petition for  
22 appeal, but you will still be able to provide input or comment  
23 on the proposed settlement through the fairness hearing, either  
24 in writing or in oral testimony, or both.

25 Now, I did mention my concern about timeliness issues,

1 because I do recognize the urgency and importance of the  
2 pending proposed settlement agreement. As I already mentioned,  
3 any responses to the Portland Police Bureau's motion to  
4 intervene is due January 22nd. I'm going to set a deadline of  
5 two weeks before then -- namely, January 8th, 2013 -- and any  
6 motion to intervene, if filed on or before the close of  
7 business on January 8th, will be deemed timely.

8 So any groups that wish to file additional motions to  
9 intervene, if they do it by January 8th, 2013, that motion will  
10 be timely. And I will then expect the United States and the  
11 City of Portland to respond to all pending motions to intervene  
12 by January 22nd. Two weeks thereafter.

13 If that presents serious problems for the parties, you're  
14 welcome to submit a motion for further extension of time, but  
15 hopefully that will not be the case that you will need more  
16 time.

17 Then two weeks after January 22nd, namely February 5,  
18 2013, is the deadline for any replies in support of a motion to  
19 intervene.

20 And then, finally, two weeks after that, on Tuesday,  
21 February 19th, 2013, at 9:00 a.m., in this courtroom, I will  
22 hold a hearing on all pending motions to intervene.

23 Now, to be clear, a motion to intervene can be filed  
24 later, but it may or may not be timely. And if it's not  
25 timely, then I'm directed to reject it. One of the criteria of

1 timeliness is whether or not there's undue or unreasonable  
2 prejudice caused by the late filing.

3 So we're not going to get into that until we have to or  
4 unless we have to, but I have ruled that any motion to  
5 intervene filed on or before the close of the day January 8th  
6 will be deemed timely. That will not be an issue.

7 Now, in addition, I would very much appreciate -- and let  
8 me put this now in the form of a tentative ruling and then  
9 solicit comments from the United States, the City of Portland,  
10 and the proposed intervenor, Portland Police Bureau, and then  
11 after that I'm going to open this up for questions from --  
12 frankly, from anyone in the public, but I'll discuss that in a  
13 few minutes.

14 But I would also appreciate receiving from the three folks  
15 that have already filed materials in this case formally by  
16 January 22nd. That's the same date as responses to motions to  
17 intervene. I'd appreciate receiving any memoranda from the  
18 United States, City of Portland, any proposed intervenors,  
19 suggesting how I should conduct the fairness hearing; in other  
20 words, should we publicize and how should we publicize the  
21 fairness hearing? Should written comments be received by one  
22 particular party as a clearinghouse and then provided to all of  
23 the others parties? Should we then allow oral testimony,  
24 either to supplement or to act instead of written testimony at  
25 the fairness hearing? And how, generally, should the fairness

1 hearing be conducted?

2 As I said, ultimately, those are my decisions, but I'd  
3 very much appreciate your views. And if we can receive those  
4 by January 22nd, I would also like to discuss those at the  
5 hearing on February 19th at 9:00 a.m. when I also rule on the  
6 motions to intervene. And then we can also set the schedule  
7 for the fairness hearing. And so as part of your suggested  
8 procedures and processes, I would very much appreciate hearing  
9 your proposed schedule for a fairness hearing. And that may be  
10 affected, depending upon whether or not the motions to  
11 intervene are granted or denied, but perhaps you might want to  
12 address in your written submissions, maybe the alternative, if  
13 we do go forward and grant the motions to intervene, here's  
14 what I've scheduled the process should be for the fairness  
15 hearing. If I deny the motions to intervene, then we should  
16 proceed along the other lines, but I very much appreciate your  
17 input. And then I envision we'll have a discussion of that on  
18 February 19th.

19 Now, in a few moments, after I hear from counsel, I am  
20 going to allow any questions to be asked about these processes  
21 or procedures from any member of the public who's here in the  
22 courtroom. My objective in this hearing, and, frankly, this  
23 entire litigation, is to comply with my obligation to determine  
24 whether or not the settlement agreement is fair, adequate, and  
25 reasonable, but I also intend to ensure that we do that with

1 processes that are fully transparent and give everyone a full  
2 and fair opportunity to be heard, whether as an intervenor or  
3 simply as a member of the public commenting at a fairness  
4 hearing. Everyone will have an opportunity to be heard.

5 Now, today is not the time for anyone to submit any  
6 substantive testimony or comments about whether the settlement  
7 agreement is or is not fair. That is not a good use of this  
8 morning's time. I will request and frankly direct that that  
9 not be done today. There will be those opportunities to submit  
10 those comments, both in writing and orally, if anyone wishes.

11 Today, though, what I'm going to be opening up for in a  
12 few minutes is for questions about the procedures or processes,  
13 or, frankly, any comments about the procedures or the processes  
14 that this Court will or should follow, but not comments about  
15 whether or not the underlying case should or should not have  
16 been settled or should or should not be settled on the terms  
17 agreed upon.

18 So let me first turn to counsel for the plaintiff, the  
19 United States, and ask if you have any comments, objections,  
20 perceptions, or views, on anything that I have said thus far.

21 I'll turn first to the United States Attorney,  
22 Ms. Marshall.

23 MS. MARSHALL: Your Honor, we appreciate and applaud  
24 the Court's instruction and direction in terms of the  
25 procedural posture of this case. The United States has been

1 fully engaged, to a high degree, with the community, with the  
2 union, and with the City, in all phases of the investigation,  
3 the negotiation, and the settlement in this case; has attended  
4 several public hearings and welcome the opportunity to have  
5 this community involved; have a transparent process and to have  
6 the opportunity for the community to bring their concerns to  
7 the Court in the form of a fairness hearing. We think that the  
8 schedule proposed is something we can work within, and we look  
9 forward to providing the memoranda that the Court has  
10 suggested.

11 THE COURT: Thank you, Ms. Marshall.

12 Mr. Williams?

13 MR. WILLIAMS: One idea, Your Honor, that was  
14 actually used in the LA case was the district court allowed  
15 groups or individuals who were not parties to the suit to  
16 submit memorandum to the Court -- a little bit different  
17 posture -- to assist the Court in deciding if there was going  
18 to be a fairness hearing, but invited public comment, set a  
19 briefing schedule, so that it -- it would allow the Court to  
20 have a better focus idea on what the objections were to, in  
21 that case, the consent decree.

22 That might be a good tool for this Court to use in this  
23 proceeding, where, in advance of public comment, the Court  
24 has -- would provide the interested parties to submit those  
25 memorandums, focusing in on what the specific objections are to



1 the settlement agreement in this case.

2 THE COURT: You know, that does make sense and that  
3 does sound like a good idea. So subject to hearing any reasons  
4 not to do that, in a few minutes, from either the City of  
5 Portland or the Portland Police Bureau, I do think that I will  
6 be inclined to allow any member of the public, whether it be an  
7 organization or an individual, to file with the clerk of the  
8 court -- that's downstairs on the first floor -- a document,  
9 but it must be done before -- on or before January 22nd if  
10 anyone wishes to provide comments either on whether there  
11 should be a fairness hearing or, if there is a fairness  
12 hearing, what it would look like, what it's scheduling might  
13 be, how it might take shape, and how I should conduct that.

14 So I think that's a very good idea, Mr. Williams. Thank  
15 you. I will reserve my right to change my mind, depending on  
16 what the City of Portland or the Portland Police Bureau say in  
17 a few moments; but until I do, I think that's a very good  
18 procedure.

19 MS. JONES: Your Honor, this is Michelle Jones from  
20 the Department of Justice. Can I make a brief request?

21 THE COURT: Yes.

22 MS. JONES: I would ask that the parties or counsel  
23 speaking for the parties, if they can speak into their  
24 microphones, because we can hear Your Honor very clearly, but  
25 when counsel speaks the sound is disrupted and we're having a

1 little trouble following.

2 THE COURT: Thank you. Counsel, you're all welcome  
3 to remain seated when you address the Court and pull the  
4 microphone closer to you.

5 Thank you for that suggestion, Mr. Williams.

6 Let me turn to the City of Portland. Either Mr. Van Dyke  
7 or Ms. Osoinach? Am I pronouncing it right?

8 MS. OSOINACH: Osoinach.

9 MR. VAN DYKE: Thank you very much, Your Honor. I'm  
10 hoping counsel on the telephone can hear me now.

11 MS. JONES: Yes.

12 MS. BROWN: Yes. Thank you.

13 MR. VAN DYKE: We think the process that the Court  
14 has outlined is eminently reasonable. We're all in favor of a  
15 transparent process. I agree with Mr. Williams's suggestion  
16 about the community being able to submit comments to the Court.  
17 The schedule is fine with us, and I -- I think we can -- we can  
18 accomplish what the Court wants to accomplish that way.

19 THE COURT: Thank you, Mr. Van Dyke.

20 Ms. Osoinach, anything?

21 MS. OSOINACH: No. Thank you, Your Honor.

22 THE COURT: All right. Mr. Karia -- am I pronouncing  
23 it correctly?

24 MR. KARIA: Karia.

25 THE COURT: Karia.

1 Mr. Karia, on behalf of the proposed intervenor, Portland  
2 Police Bureau, any comments, observations, issues, objections?

3 MR. KARIA: Thank you, Your Honor. It's actually the  
4 Portland Police Association. The Bureau is part of  
5 Mr. Van Dyke's and Ms. Osoinach.

6 THE COURT: You know what? I knew that. I misspoke.  
7 I apologize.

8 MR. KARIA: I don't want to tread on their territory.

9 As a general proposition, we will defer to the Court's  
10 judgment regarding scheduling and the need -- the desire for  
11 public input. A question that I did have for the Court,  
12 however, was whether a stay of implementation of the proposed  
13 settlement agreement, as the Court works through these issues,  
14 is appropriate.

15 THE COURT: Well, no one has moved formally for a  
16 stay, and therefore no one has moved or opposed a stay. I have  
17 not entered any order other than extension of time. If the  
18 parties voluntarily wish to engage in some action, pursuant to  
19 the settlement agreement or otherwise, if they both agree upon,  
20 then that's not for the Court to reject, at least absent a  
21 motion for some type of temporary or preliminary injunctive  
22 relief supported in law and after a hearing with the  
23 opportunity for anyone opposing that motion to be heard.

24 Now, I do appreciate and understand the urgency here. So  
25 if there is such a motion filed, I am prepared to move on it

1 very rapidly. We'll accelerate briefing, if need be;  
2 accelerate discovery, if need be; and we'll convene a hearing  
3 promptly and issue a ruling promptly. But I don't think it's  
4 appropriate for me to enter any directions at all of that sort,  
5 at least absent a motion and absent an opportunity to be heard.  
6 Do you disagree?

7 MR. KARIA: No, sir.

8 THE COURT: Anything further from the Portland Police  
9 Association at this time? Anything further?

10 MR. KARIA: No, sir.

11 THE COURT: All right. Very good.

12 Now, at this time, if there are any members of the  
13 public -- by the way, you don't have to. This is not a  
14 requirement. If there are any members of the public that wish  
15 to be heard on any of these issues or have any questions, in a  
16 few moments our courtroom deputy, Mary Austad, is going to step  
17 back to where that swinging gate is, and she'll have a  
18 microphone. I will ask that you stand in line behind -- in a  
19 single-file line, if anyone has any comments or questions,  
20 immediately behind that swinging gate that leads to this  
21 portion of the courtroom, and then one at a time Ms. Austad  
22 will call you up. I'll ask that you speak out slowly in the  
23 microphone and you'll begin by stating your name and then you  
24 will be heard. And I'll do my best to respond.

25 Of course we'll give opportunities to the United States,

1 to the City of Portland, or to the Portland Police Association  
2 to comment on anything that we've heard if you wish to ask a  
3 question or make a procedural point.

4 But as I said before, please, this is not the time to  
5 comment on whether or not this case should have been settled or  
6 make a comment on whether or not the proposed settlement  
7 agreement is fair, adequate, and reasonable. There will be  
8 other times to do that, but now is not the time.

9 That said, does anyone wish to make a comment? Please  
10 feel free to step forward and rise.

11 Ms. Austad.

12 Again, state your name and speak slowly and clearly.

13 MR. ROSE: Good morning, Your Honor. Michael Rose.  
14 I'm appearing on behalf the Albina Ministerial Alliance  
15 Coalition and the National Lawyers Guild. I was noting that  
16 the Court's proposed procedure in addressing these questions  
17 struck me as being a very reasonable and sane way of getting  
18 through this morass.

19 I have just one procedural question. I know that the  
20 coalition is planning on filing a motion to intervene, and  
21 we'll be able to do so, I expect, by January 8th. The 22nd is  
22 the date for comments with regards to the fairness hearing.  
23 Both organizations that I'm representing are strongly in favor  
24 of the fairness hearing. My sense is -- and this is just some  
25 direction for counsel who's going to be doing the heavy lifting

1 on writing this -- is the Court has solicited from the parties  
2 a memorandum with regard to what this fairness hearing ought to  
3 look like, whether we ought to have it at all and that kind of  
4 thing. My contemplation would be that the coalition would be  
5 filing similarly, at the same time, a similar kind of document  
6 addressing similar kinds of concerns, even though their  
7 intervenor status has not yet been determined.

8 Am I correct in that assumption, Your Honor?

9 THE COURT: Yes, Mr. Rose. Frankly, building on the  
10 comment that Mr. Williams, for the United States, suggested,  
11 anyone is welcome to submit and to file comments on the  
12 proposed schedule and processes and organization and process of  
13 the fairness hearing by January 22nd, whether they are already  
14 an intervenor or a party or have petitioned for intervention or  
15 even if they don't want to petition for intervention but just  
16 want to make comments on what the process of the fairness  
17 hearing should look like. Everyone is welcome to do that.

18 Now, we have in the court system an electronic case  
19 docketing system, and I'm not expecting especially nonlawyers  
20 or even nonparties to use that system. So if you file a  
21 document the old fashioned way, in a hard copy, bring it to the  
22 clerk's office, on the first floor, and the Court will ensure  
23 it is scanned so it is part of the official court file and so  
24 that all parties will be able to see copies of whatever is  
25 filed. But I'm right now granting permission for anyone and

1 everyone who wishes to file comments on what the fairness  
2 hearing should look like and how it should be conducted and  
3 held, as long as they do it on or before the close of business  
4 January 22nd, so everyone will have time to read it and discuss  
5 it on February 19th.

6 Does that answer your question, Mr. Rose?

7 MR. ROSE: It does, and I also simply wanted to note  
8 that I thought Mr. Williams's suggestion in that regard was a  
9 perfectly appropriate and apt one, and I'm not used to agreeing  
10 with Mr. Williams in public, so I just wanted to -- I just  
11 wanted to mention that.

12 THE COURT: Thank you, Mr. Rose.

13 MR. ROSE: Thank you.

14 DR. HAYNES: Honorable Judge, Reverend LeRoy Haynes,  
15 Jr., chairperson of the Albina Ministerial Alliance Coalition  
16 for Justice and Police Reform. I think, overall, Judge, the  
17 direction and the -- the things that you have stated basically  
18 lead us in the right direction that the community desires to  
19 go. I think the piece of the memorandum would be one great  
20 aspect of soliciting, because we do have members of our  
21 community that feel intimidated by the Portland Police Bureau  
22 and have experienced intimidation by the Portland Police  
23 Bureau.

24 And, secondly, I also believe by having a public hearing,  
25 in terms of soliciting comments from the community, would be an

1 outstanding way of proceeding in terms of the hearing from the  
2 public is concerned and making sure that there is a publicity  
3 to the community.

4 Many times, so many things happen in our community that  
5 the public does not have information about the procedures that  
6 are taking place.

7 Thank you very much.

8 THE COURT: Thank you, Mr. Haynes. That's a good  
9 point, too. I would appreciate hearing from anyone to wishes  
10 to file suggestions on how to conduct the fairness hearing and  
11 the processes to also include how we should go about notifying  
12 the public of their right to submit information in writing, to  
13 appear and give testimony, or make oral presentations at the  
14 fairness hearing, and then how we should go about, as I  
15 mentioned earlier, having a clearinghouse, or something, to  
16 make sure that everyone is fully informed of all materials  
17 received.

18 Thank you, Mr. Haynes, for that suggestion.

19 MS. HARDESTY: Good morning, Your Honor.

20 THE COURT: Good morning.

21 MS. HARDESTY: Distinguished lawyers in the gallery,  
22 for the record, my name is Jo Ann Hardesty. I'm a Steering  
23 Committee member with the Albina Ministerial Alliance Coalition  
24 for Justice and Police Reform.

25 Judge, I had a question in regard to the question about



1 whether or not there would be a stay. It was my understanding  
2 that until you signed off on the settlement agreement it isn't  
3 moving forward, and so I'm -- I was a little confused by the  
4 Portland Police Association's desire to put a stay in place, so  
5 I hope you will address that.

6 THE COURT: I think -- I will begin by addressing it.  
7 After I address it, let me turn it over to both the United  
8 States and the City of Portland for comments.

9 Here's what I -- how I see it -- by the way, if someone  
10 thinks I'm looking at it incorrectly, by all means, feel free  
11 to correct me.

12 I'm not making any orders at all today other than the  
13 scheduling orders that you all are hearing. I'm not granting  
14 any permission to anyone to do something, I'm not forbidding  
15 anyone from doing anything, and I'm certainly not making any  
16 rulings on the settlement agreement.

17 If one analogizes this to a private lawsuit, well, the  
18 parties to a lawsuit can agree and do anything that they wish  
19 to do. It won't have the blessing or the force of law or  
20 blessing of the Court until they apply for and receive such  
21 permission. But nothing prohibits parties from doing  
22 something.

23 Now, on occasion, if parties do something, there may be  
24 other people that believe that what those parties may be doing  
25 violates the law, and they can then either raise those issues

1 with the parties and try to persuade the parties not to do  
2 that, or they can seek either what's called a temporary  
3 injunctive relief or a preliminary injunctive relief from the  
4 Court. And if that happens, they do that by way of a formal  
5 filed motion. And the Court, generally acting very rapidly, at  
6 least when circumstances require, will hear and resolve that  
7 dispute where the person argues that someone shouldn't be  
8 allowed to do something because it violates their rights, and  
9 then the Court will make those decisions, which may only be  
10 temporary or pending decisions pending a final adjudication of  
11 the underlying lawsuit, but the Court still has the authority  
12 to do that pending the lawsuit.

13 So, that said, I'm not planning on entering any orders  
14 whatsoever today, at least other than the scheduling orders.  
15 But is there something further either the United States wishes  
16 to comment on with respect to Ms. Hardesty's comment?

17 MR. WILLIAMSON: Well, Your Honor, I do want to  
18 respond, but I want to give the City an opportunity to respond  
19 first, because this affects, I believe, plans that are in place  
20 to begin training consistent with the terms of the agreement.

21 THE COURT: Okay. Thank you, Mr. Williams.

22 Mr. Van Dyke?

23 MR. VAN DYKE: Yes, thank you, Your Honor. I concur  
24 with Ms. Hardesty's understanding of the process here, in that  
25 I don't expect the consent -- the settlement agreement to be

1 entered until after a fairness hearing is held, so I agree on  
2 that respect.

3       Nonetheless, we have some desire to collectively bargain  
4 with our union regarding the proposed changes in the settlement  
5 agreement, and we have previously given the union notice of our  
6 desire to collectively bargain. It could be that that is the  
7 issue to which the Portland Police Association is responding.

8       We do also have some related training issues and so forth.  
9 So perhaps the Portland Police Association could flesh out for  
10 us here a little bit more of their concern regarding a stay.

11       THE COURT: All right. Thank you, Mr. Van Dyke. I'm  
12 not going to require Mr. Karia to do that.

13       But if you wish to be heard on any of these issues,  
14 Mr. Karia, you're welcome.

15       MR. KARIA: Sure. Thank you, Your Honor. The  
16 Portland Police Association's concern about the ongoing  
17 implementation by the Portland Police Bureau of aspects of the  
18 settlement agreement is by going ahead and, for instance,  
19 starting training on revised use of force, taser policies, and  
20 whatnot, that a piece of the settlement agreement has not been,  
21 one, offered for public input before this Court, as this Court  
22 appears to be heading into, and, also, that mere act violates  
23 collective bargaining rights under both the Portland Police  
24 Association's contract with the City and the state law. And  
25 without getting into the merits of that, because I don't want

1 to get ahead of ourselves with respect to the motion to  
2 intervene, the Association's general concern is that we're  
3 letting the proverbial cart get before the horse.

4 THE COURT: Thank you, Mr. Karia.

5 Ms. Hardesty, any follow-up comments you wish to make?

6 MS. HARDESTY: Thank you, Judge Simon. The last  
7 comment that I wanted to make was to reinforce what Dr. Haynes  
8 said about outreach to the community. Many times government  
9 agencies put press releases on their websites, and they call  
10 that public notice, and that really is not sufficient to engage  
11 and involve the community, so it is my hope that we will  
12 certainly submit recommendations for the community fairness  
13 hearings. But I wanted to just, like, put that notice on the  
14 court record that press releases by themselves or putting it on  
15 a government website is not, in my mind, engaging the public in  
16 this activity. It's really important that the public be  
17 engaged and involved in this.

18 THE COURT: I appreciate that comment, Ms. Hardesty,  
19 so I do look forward to receiving materials, whether it be from  
20 you or Mr. Haynes or Mr. Rose, counsel, or really anyone else,  
21 that would help actually spell out, along the lines of what  
22 Mr. Williams suggested and what I echoed, that will help spell  
23 out what really should we do in order to do that effectively.  
24 So I appreciate whatever specifics and advice we will receive  
25 by January 22nd that we'll then discuss on February 19th.

1 Thank you.

2 Yes, sir.

3 MR. HANDELMAN: Good morning. My name is  
4 Dan Handelman. I'm a member of Portland Copwatch. I'm also on  
5 the Steering Committee of the Albina Ministerial Alliance  
6 Coalition for Justice and Police Reform. I want to thank you  
7 for your very clear presentation this morning. It's very easy  
8 for people who don't read lawyerese to understand what you're  
9 saying.

10 I understand that what you're saying is that the City and  
11 the DOJ are free to start implementing the agreement before  
12 it's entered. What I'm concerned about is that, for instance,  
13 some policies were put forward. Some as far back as February  
14 and some in November. And the one in November came out for  
15 public comment, which was very good. We don't know what the  
16 status is of those, though. We haven't been informed whether  
17 they have been adopted.

18 And, for instance, there's going to be somebody to  
19 implement the Court agreement that's known as the COCO. And  
20 that -- my understanding of what I just heard last week is that  
21 that -- the job proposal for that person is going to be going  
22 up online at the beginning of January before Your Honor has a  
23 chance to look at the agreement, and the -- the community has  
24 not had a chance to see what that job description looks like or  
25 any input into it. So I would hope that even though -- I know

1 you don't want to give any orders, but I'm hoping that you  
2 would encourage the parties of this lawsuit to involve the  
3 community in every step as they move forward so that everything  
4 doesn't get set in place before we have a chance to speak to  
5 Your Honor about it.

6 THE COURT: Thank you, Mr. Handelman.

7 Mr. Van Dyke, would you like to respond?

8 MR. VAN DYKE: I just wanted to say I appreciate  
9 Mr. Handelman's comments and just want to let him know that at  
10 this point and let the parties know at this point that we're  
11 going -- undergoing, as they know, as you all know, a change in  
12 administration at the City, beginning on January 1st, so the --  
13 my intent is to sit down with the mayor elect immediately after  
14 the transition, brief him and his staff on this hearing, as  
15 well as potential next steps.

16 THE COURT: Thank you. Good morning, Mr. Sutton.  
17 Good to see you, sir.

18 MR. SUTTON: Good morning. Good morning. Microphone  
19 work?

20 THE COURT: It does. And state your full name,  
21 please.

22 MR. SUTTON: Barry Sutton.

23 THE COURT: Thank you.

24 MR. SUTTON: I'm a concerned citizen, and I'm very  
25 concerned about James Chasse and what happened and what did not

1 happen and should have happened. I went into city hall and  
2 talked with Commissioner Saltzman, and one of his aides said  
3 that -- told me that a medic examined James Chasse and he was  
4 all right. And I know with 15 broken ribs they would have  
5 found something. And then he went into the police car and then  
6 came down to the Justice Center here, and he had several broken  
7 ribs. Someone there in the office had said that must have been  
8 when he gave him -- he, Officer Humphreys, gave him artificial  
9 resuscitation; in other words, got on his chest and pushed --  
10 pushed to keep him alive, for some reason or another, and --  
11 well, Officer Humphreys was never completely prosecuted for a  
12 crime that I believe that he did. And apparently I'm told that  
13 the DA has the -- the final say in that, and people can't --  
14 there's no other place to go, and -- and this shouldn't be.

15 This is just one part of what's wrong -- excuse me. This  
16 is just one part of what's wrong with our justice system, and  
17 I'm sure no people here -- very few, if any, people have lived  
18 in a community where they're downtrodden and they have to look  
19 out for the police. And it would be terrible to be in fear of  
20 someone's life, as some people are, the gentleman --  
21 Mr. Haynes, said at the beginning, it is truly intimidation,  
22 and I -- I don't -- I don't want to live in a city where --  
23 where the police are getting away openly -- where the police  
24 to -- to the federal people that are coming in here, where the  
25 police are openly getting away with crime. I won't have that.

1           So this -- this is something that's very necessary. I  
2 just wanted to say that. And apologies are wonderful for  
3 things that have happened, but they're after the fact.

4           Thank you, Your Honor.

5           THE COURT: All right. Thank you. Thank you,  
6 Mr. Sutton.

7           MS. BRAUN: Hi. Katie Braun. Also, just a concerned  
8 citizen. I wanted to thank the Court for this hearing and  
9 everybody giving their time and energy. I have witnessed and  
10 experienced firsthand the police brutality in this city, and I  
11 am glad that we are going to have a forum to discuss it. I  
12 hope it is well publicized. I have no idea how to get more  
13 people involved, because it means coming away from work and our  
14 families to talk about it in a public forum, but I think it's  
15 very valuable and useful, because, unfortunately, I think the  
16 excessive force in Portland against the community is out of  
17 control. Thank you.

18           THE COURT: All right. Thank you, Ms. Braun.

19           Now, you mentioned the difficulty of taking time away from  
20 work. Although, it's obviously very important, and important  
21 matters sometimes require such time, I will be open, but I  
22 would like to see what people propose. And we'll discuss it on  
23 February 19th. But I'll be open to holding session in the  
24 evenings or, you know, outside of normal Monday through Friday  
25 9:00 to 5:00 hours. Whether it be weekends or evenings, we can



1 make special arrangements with the courthouse and court  
2 security issues. That's a possibility if enough people think  
3 that's a good idea. But, again, I don't want to predetermine  
4 anything, but you're welcome to make those comments as we move  
5 forward to decide the processes.

6 All right. Let me ask for any final comments, if any.  
7 I'm going to go first again to the United States, then the City  
8 of Portland, and then to the Portland Police Association for  
9 any final comments before I adjourn this hearing.

10 Ms. Marshall or Mr. Williams, or anyone on the telephone?

11 MS. MARSHALL: I don't have anything else,  
12 Your Honor. Thank you for your guidance here today. I think  
13 it's been very helpful to the community and to the parties.

14 MR. WILLIAMSON: Thank you, Your Honor. Just a  
15 couple things. In terms of the submissions due on the 22nd,  
16 regarding the -- what -- what the hearing for public comment  
17 would look like procedurally, if the Court would be so inclined  
18 to also in those memorandums have individuals and  
19 representatives of organizations specifically identify for the  
20 Court what their specific issues are with the settlement  
21 agreement. I think it helps crystallize what the objections  
22 would be and also helps formulate, to some extent, what we can  
23 accomplish in the hearing.

24 THE COURT: Yeah. Let me tell you my reaction to  
25 that. Certainly, if anyone wishes in their submission, by

1 January 2nd, to give the Court, as well as all of the parties  
2 and post-intervenors some indication of what their concerns are  
3 with the settlement agreement, that could help make this  
4 process smoother, more efficient, and help us reach the right  
5 results and the best results more promptly. And so I accept  
6 that as a suggestion, and anyone is welcome to do that and  
7 include that.

8       However, they will not be precluded from raising either  
9 the same or different objections at the time of the fairness  
10 hearing in accordance with the appropriate schedule. I want to  
11 make sure that we construct a fairness hearing procedure and  
12 process such that everyone will have the time and the  
13 opportunity to submit whatever views they wish for or against  
14 the settlement agreement or anything else relating to these  
15 issues.

16       So if they wish to make those comments on their  
17 January 22nd submission, those would be welcome and probably a  
18 good idea. But that would not preclude them from being given  
19 another opportunity down the road.

20       MR. WILLIAMSON: Thank you, Your Honor, consistent  
21 with the process you outlined, I think it's consistent with the  
22 fact that there have been, in this investigation, an  
23 unprecedented level of opportunity for public comment, in terms  
24 of the investigation, the steps, and -- and, ultimately, the  
25 settlement agreement that's before the Court.

1           So the process that you're discussing is certainly  
2 consistent with what has gone on for in excess of 15 months.  
3 And in terms of -- while we believe that the agreement is fair  
4 and adequate and reasonable, we will lay out for the Court,  
5 obviously in terms of our response to the motion to intervene,  
6 what the government's position is.

7           THE COURT: Very good. Thank you, Mr. Williams.

8           Mr. Van Dyke or Ms. Osoinach, anything for the City?

9           MR. VAN DYKE: I just want to thank the Court for the  
10 clarity of the process here today. I think that it's very  
11 helpful. And I just want to thank the members of the community  
12 for showing up and providing their input. I also want to say  
13 that as we try to put together our ideas of what the fairness  
14 hearing ought to look like and notice that ought to go out to  
15 the community, if anyone wants to submit a notice to us or  
16 their thoughts to us before January 22nd, when we submit  
17 something to the court, I'll be sure that we read those and  
18 take those into account.

19           We certainly recognize that we don't have a corner on good  
20 ideas, so I'll be glad to hear what people have to say. You  
21 don't have to do that. We're glad to take a look at whatever  
22 you submit to the Court and try to work towards an equitable  
23 way to do this.

24           Thank you, Your Honor.

25           THE COURT: Thank you, Mr. Van Dyke.

1 Mr. Karia, anything further?

2 MR. KARIA: Nothing further, Your Honor.

3 THE COURT: All right. Very good. Then we'll be in  
4 recess until Tuesday morning, February 19th, 2013, at 9:00 a.m.

5 Although, as I said, if anyone needs the assistance of the  
6 Court before then, I'll make myself available promptly. Just  
7 let the courtroom deputy, Mary Austad, know. You can call her  
8 by telephone or send her an email. Her contact information is  
9 available on the court's website. If you need me, I'll be  
10 there for you. If you don't, I look forward to seeing you on  
11 February 19th, 9:00 a.m. We'll be in recess.

12 (Hearing concluded.)  
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C E R T I F I C A T E

USA v. City of Portland

Status Conference

December 21, 2012

I certify, by signing below, that the foregoing is a true and correct transcript of the record of proceedings in the above-entitled cause. A transcript without an original signature, conformed signature, or digitally signed signature is not certified.

/s/Jill L. Erwin, CSR, RMR, RDR, CRR

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Official Court Reporter

Date: December 30, 2014